

CHRISTINE A. CHELOSSI
Claimant

K.C. BELL, INC.

AND

CLARENDON NATIONAL INS. CO.

Docket No. 1,007,821

Claimant appealed from an Award entered by Administrative Law Judge (ALJ) Kenneth J. Hursh on April 12, 2004. The Appeals Board (Board) heard oral argument on July 27, 2004.

James L. Wisler of Lawrence, Kansas, appeared on behalf of claimant. Rex W. Henoeh, of Lenexa, Kansas, appeared on behalf of respondent and its insurance carrier (respondent).

The Board has considered the record and adopted the stipulations listed in the Award. During oral argument to the Board the parties agreed that the amount of permanent partial disability compensation awarded by the ALJ was miscalculated because it failed to take into consideration the weeks of temporary partial disability compensation awarded.

ISSUES

The Award grants permanent partial disability compensation for a seven (7) percent general body disability. The disability award is based on the average of functional impairment ratings by Dr. Peter V. Bieri and Dr. Michael Poppa using the diagnosis related estimate (DRE) method of rating under the *AMA Guides*.¹ On appeal, claimant contends the disability should be based on the 16 percent impairment rating given by Dr. Bieri using the range of motion and loss of strength methods and combining the two with the percentage he found under the DRE method.

Respondent argues that Dr. Poppa's five (5) percent rating is the most credible.

The nature and extent of claimant's disability is the only issue raised for the Board's review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Board concludes the ALJ's determination of claimant's percentage of permanent partial disability (functional impairment) in the Award should be affirmed, but the award calculation should be modified to account for the seven (7) weeks of temporary partial disability compensation respondent was ordered to pay in the total amount of \$2,088.12.²

The Board agrees with and adopts as its own the findings and conclusions stated by the ALJ in his Award. Dr. Bieri's 16 percent rating is not persuasive in light of the *Guides* recommendation for using the range of motion model only if the injury model is not applicable. Furthermore, the nine (9) percent rating by Dr. Bieri using the injury (DRE) model is more consistent with Dr. Poppa's five (5) percent rating using that same method of rating under the *Guides*. The Board affirms the finding of seven (7) percent disability to the body as a whole.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Kenneth J. Hursh dated April 12, 2004, should be, and is hereby modified as follows:

¹American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.).

²Award at 2, Stipulation No. 9.

The claimant is entitled to 32.54 weeks of temporary total disability compensation at the rate of \$432 per week or \$14,057.28 followed by 27.82 weeks of permanent partial disability compensation at the rate of \$432 per week or \$12,018.24 for a seven (7) percent functional disability, making a total award of \$26,075.52.

As of October 15, 2004, there would be due and owing to the claimant 32.54 weeks of temporary total disability compensation at the rate of \$432 per week in the sum of \$14,057.28 plus permanent partial disability compensation at the rate of \$432 per week in the sum of \$12,018.24 for a total due and owing of \$26,075.52, which is ordered paid in one lump sum less amounts previously paid.³

IT IS SO ORDERED.

Dated this _____ day of October 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James L. Whisler, Attorney for Claimant
Rex W. Henoch, Attorney for Respondent and Clarendon National Ins. Co.
Kenneth J. Hursh, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

³The proper method to account for the payment of temporary partial disability compensation is to convert the amount of temporary partial paid into a weekly equivalent of temporary total disability compensation by dividing the total sum of temporary partial disability benefits paid by the weekly temporary total disability benefit rate. *Brobst v. Brighton Place North and Church Mutual Insurance Company and Kansas Workers Compensation Fund*, Docket No. 152,447; 152,448 & 152,449 [Affirmed by the Kansas Court of Appeals, 24 Kan. App. 2d 766, 955 P.2d 1315 (1997)].